SOONG (MIGRATION) [2025] ARTA 409 (3 MARCH 2025)

Decision and

Reasons for Decision

Applicant:	Miss Yan Hong SOONG
Respondent:	Minister for Immigration and Multicultural Affairs
Tribunal Number:	2407803
Tribunal:	General Member W Banfield
Place:	Canberra
Date:	3 March 2025
Decision:	The Tribunal sets aside the decision under review and remits the application for a Student (Temporary) (Class TU) visa for reconsideration, with the direction that the applicant meets the following criteria for a Subclass 500 (Student) visa: • Public Interest Criterion 4020 for the purposes of cl 500.207(1) of Schedule 2 to the Regulations

Statement made on 03 March 2025 at 5:53pm

CATCHWORDS
MIGRATION –Student (Temporary) (Class TU) visa – subclass 500 (Student) visa – applicant provided a bogus document when she applied for a Visitor visa – evidence of past employment – not satisfied that the applicant's documents are non-genuine – applicant meets PIC 4020 – decision under review remitted

LEGISLATION
Migration Act 1958, ss 65, 375
Migration Regulations 1994, r 1.12, Schedule 2, cl 500.207

CASES
Arora v MIBP [2016] FCAFC 35
Batra v MIAC [2013] FCA 274
Trivedi v MIBP [2014] FCAFC 42

Statement of Reasons

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister on 10 April 2024 to refuse to grant the applicant a Student (Temporary) (Class TU) visa under s 65 of the *Migration Act 1958* (Cth) (the Act).

2. The applicant applied for the visa on 13 April 2023. The delegate refused to grant the visa on the basis that the applicant did not satisfy the requirements of cl 500.217(1) of Schedule 2 to the *Migration Regulations 1994* (Cth) (the Regulations) because there was evidence before the Minister that the applicant provided, or caused to be provided, bogus documents or false or misleading information in relation to the visa application.

3. The applicant appeared before the Tribunal on 7 November 2024 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Mandarin and English languages.

4. The applicant was represented in relation to the review.

5. Department decision

6. The applicant submitted a copy of the Department's decision record dated 10 April 2024. The delegate made the following findings:

7. There is evidence before the Minister that the applicant has provided, or caused to be provided, a bogus document or false or misleading information in relation to this visa application.

8. The student visa application (TRN: EGOX6VDMQ7) currently under consideration was lodged on 13 April 2023. The applicant intends to study:

9. ● Diploma of Leadership and Management

10. ● Advanced Diploma of Leadership and Management

11. The applicant lodged the current student visa whilst they were onshore with a valid Visitor visa (TRN EGOV3WL3AX), granted on 07 November 2023 and valid until 24 June 2023.

12. In the Visitor visa application lodged on 04 January 2023, the applicant provided the following documents as evidence of their employment:

13. ● Personal declaration in the Application for Electronic Travel Authority that Soong Yan Hong works in Singapore and that your Work Permit visa expires on 19 February 2024.

14. ● Confirmation of Employment letter from NAFA System Services Pte Ltd, issued 30 September 2022 and signed by Tan Yeo Leng as Managing Director, offering employment as a Human Resource Assistant commencing on 1 June 2022.

15. To support their Student visa application, the applicant provided the following employment letter and bank statement (with details below) as evidence of their employment:

16. ● Employer letter from NAFA System Services Pte Ltd, dated 31 January 2024 and signed by Jia Hui as the HR Manager, confirming the employment of Soong Yan Hong as a Human Resource Assistant from 1 June 2022 to 16 January 2023.

17. The Department conducted checks to confirm information provided with this application and obtained information that revealed these documents as bogus. Based on the checks conducted, there were concerns the applicant had given or caused to be given a bogus document within the meaning of Section 5(1) of the Migration Act 1958.

18. On 12 March 2024, the applicant was given the opportunity to comment on the adverse information in a natural justice letter emailed to them.

19. The applicant submitted a response to the Department on 9 April 2024, however, the Department decided to refuse the application.

20. Written evidence to the Tribunal

21. The applicant submitted the following documents to the Tribunal:

- Representative's written submission dated 9 April 2024.
- Confirmation of Employment from NAFA System Services Pte Ltd dated 30 September 2022.
- Work Reference Letter from NAFA System Services Pte Ltd dated 31 January 2024. signed by Jia Hui as the HR Manager.
- Job Offer letter from NAFA System Services Pte Ltd dated 23 May 2022.
- Employment Contract from NAFA System Services Pte Ltd dated 23 June 2022.
- Payslips from NAFA System Services Pte Ltd.
- Multiple bank statements from POSB in the name of the applicant indicating salary deposited by NAFA System Services Pte Ltd.
- IPA Work Permit in the name of the applicant including NAFA System Services as employer in Singapore.

22. The Tribunal also considered the evidence and documents contained on the Department file.

23. Evidence at the hearing

24. The applicant confirmed she came to Australia in February 2023. She has a friend in Australia who invited her to visit as they had not seen each other since lockdown. The applicant advised she was still working in Singapore at the time, however, she departed from Malaysia. The applicant claimed she had been in Singapore for eight or nine years. The applicant said she applied for a student visa as she wanted to spend time deciding what to do in future. She resigned from her job and applied to study in Australia to improve her English and herself. The applicant stated Singapore is good, but her English was not improving because of the way it is spoken there.

25. The applicant advised she completed high school in Malaysia then went to Singapore with a view to study. However, she found it too stressful there. The Tribunal asked what work she had done in Singapore. The applicant said she worked as a Human Resource (HR) assistant, because her previous employer had been a cleaning company. At the last position with NAFA Systems, her role was to arrange permits for workers to enter jobsites and to arrange training for them. The applicant said while in Singapore, she had worked as a clerk, a sales coordinator, an administrative assistant, and then her last role was in HR for approximately eight months.

26. The Tribunal asked the applicant to give details about her employer, NAFA Systems. She said it was a company that supplied workers in the cleaning industry. In her position the applicant said she assisted workers to obtain clearance to enter jobsites, and to gain government certification if required. She said she answered emails and calls, found candidates for the job sites, and liaised with supervisors. In response to the Tribunal's questions, the applicant gave details about the size of the office she worked in, and the number of employees. The applicant was asked about the address of the company she last worked for because written documentation contained different details. The applicant claimed the company moved but it was after she had left. She stated the address on the later reference letter was correct.

27. The Tribunal put to the applicant that the Department had been unable to confirm her employment with the company in Singapore. The applicant stated she submitted a letter from her work leader, Jia Hui and had also spoken to Ms Lee. The applicant claimed Ms Lee had not taken a call from the Department, and neither had the applicant's replacement, who she said also knows her. The applicant could not understand why the Department was unable to verify her employment because she said she has kept in touch with her former colleagues, and they still know her.

28. The Tribunal explained the waiver criteria to the applicant. The applicant is unmarried with no dependents, but she has a boyfriend. She has no family members in Australia The applicant did not have any submissions to make regarding the criteria that may be considered by the Tribunal in deciding whether to exercise its discretion to waive the relevant public interest criteria.

29. In conclusion the applicant said she applied for a student visa to apply for a better job and improve herself. She claimed all her documents are genuine and not bogus.

30. Invitation to comment – non-disclosure certificate.

31. On 1 October 2024 the Tribunal wrote to the applicant inviting her to comment on information. The applicant was advised that the Department issued a non-disclosure certificate and notification under s.375A of the Migration Act preventing the disclosure of certain documents held on the Departmental file in her case. She was informed that the Tribunal is unable to disclose the documents that are the subject of the non-disclosure certificate but that they relate to the Department's internal visa assessment and refusal process. The applicant was provided with a copy of the non-disclosure certificate and invited to comment but she did not do so.

32. For the following reasons, the Tribunal has concluded that the decision under review is set aside, and the matter be remitted for reconsideration.

CONSIDERATION OF CLAIMS AND EVIDENCE

33. The issue in this review is whether the visa applicant meets Public Interest Criterion 4020 (PIC 4020) as required by cl 500.207(1) for the grant of the visa. Broadly speaking, this requires that:

- there is no evidence that the applicant has given, or caused to be given, to the Minister, an officer, the Tribunal, a relevant assessing authority, or Medical Officer of the Commonwealth, a bogus document or information that is false or misleading in a material particular in relation to the application for the visa or a visa that the applicant held in the 12 months before the application was made: PIC 4020(1); and

- the applicant and each member of the family unit has not been refused a visa because of a failure to satisfy PIC 4020(1) during the period starting 3 years before the application was made and ending when the visa is granted or refused, unless the applicant was under 18 at the time the application for the refused visa was made: PIC 4020(2) and (2AA); and

- the applicant satisfies the Minister as to his or her identity: PIC 4020(2A); and

- neither the applicant nor any family unit member has been refused a visa because of a failure to satisfy PIC 4020(2A) during the period starting 10 years before the application was made and ending when the visa is granted or refused, unless the applicant was under 18 at the time the application for the refused visa was made: PIC 4020(2B) and (2BA).

34. The requirements in PIC 4020(1) and (2) can be waived if there are certain compelling or compassionate circumstances justifying the granting of the visa: PIC 4020(4). However, this waiver does not apply to the identity requirements in PIC 4020(2A) and (2B). PIC 4020 is extracted in the attachment to this decision.

Has the applicant given, or caused to be given a bogus document, or information that is false or misleading in a material particular?

35. The term 'information that is false or misleading in a material particular' is defined in PIC 4020(5) and the term 'bogus document' is defined in s 5(1) of the Act (see the attachment to this decision). In contrast to the definition of 'information that is false or misleading in a material particular' in PIC 4020(5), the reference in the definition of bogus document to a document that was obtained because of a 'false or misleading' statement has no requirement that it be relevant to a criterion for the grant of the visa: *Arora v MIBP* [2016] FCAFC 35; *Batra v MIAC* [2013] FCA 274.

36. The requirement in PIC 4020(1) not to provide a bogus document, or false or misleading information, applies whether or not the Minister became aware of the bogus document or information that is false or misleading in a material particular because of information given by the applicant: PIC 4020(3). It also applies whether or not the document or information was provided by the applicant knowingly or unwittingly.

37. While PIC 4020 refers to information that is false, in the sense of purposely untrue, it is not necessary for the Minister (or the Tribunal on review) to conclude that the applicant was aware the information was purposely untrue in order for PIC 4020 to be engaged. However, an element of fraud or deception by some person is necessary to attract the operation of the provision: *Trivedi v MIBP* [2014] FCAFC 42.

38. At the time the applicant applied for the student visa which is the subject of this review, the Department undertook checks to verify the documents provided with a visa application. The document the Department sought to authenticate was a reference letter from NAFA System Services Pte Ltd, dated 31 January 2024 and signed by Jia Hui as the HR Manager, confirming the applicant's employment as a Human Resource Assistant from 1 June 2022 to 16 January 2023. According to the decision record of 10 April 2024 the Department conducted checks on the above-mentioned documents and found the applicant had provided bogus documents within the meaning of section (5)1 of the Migration Act.

39. The applicant's written evidence includes letters from the employer, payslips and bank statements displaying the name of the business the applicant claimed to have worked for at the relevant time.

40. At the Tribunal hearing the applicant was asked about her background working in Singapore, and specifically her claimed employment at NAFA System Services Pte Ltd. She gave evidence that the company engages contract workers in the cleaning industry, and she was employed as an HR Assistant. The applicant provided a summary of the type of duties she was required to carry out. She provided an explanation for the two different addresses that appear on documents and gave details about the size of the business and employee numbers. The Tribunal found the applicant to be relatively consistent in her evidence and forthcoming in her responses.

41. The Tribunal weighed the applicant's evidence against the Department's reason for concluding the applicant provided a bogus document when she applied for a Visitor visa. In this case, the Tribunal is prepared to accept the applicant's evidence of past employment. Some reservations remain due to the applicant's claims that current employees of the company in Singapore know her and would be able to verify her work history, yet the Department appears not to have been able to do so. However, the Tribunal is not satisfied on the information available to it that the applicant's documents are non-genuine and that she had given, or caused to be given, a bogus document as defined in section (5)1 of the Migration Act.

42. Therefore, the applicant meets PIC 4020(1).

Has a visa previously been refused on the basis of a failure to satisfy PIC 4020(1)?

43. PIC 4020(2) requires the Tribunal to be satisfied that the applicant and each member of the family unit have not been refused a visa because of a failure to satisfy PIC 4020(1) in the period commencing 3 years before the application was made and ending when the visa is granted or refused. This requirement does not apply to a person who was under 18 at the time the application for the refused visa was made: PIC 4020(2AA).

44. There is no evidence before the Tribunal to indicate the applicant or any member of the family unit (as defined in reg 1.12) have been refused a visa in the relevant period because of a failure to satisfy PIC 4020(1).

45. Therefore, PIC 4020(2) is met.

Has the applicant satisfied the identity requirements?

46. PIC 4020(2A) requires an applicant satisfy the Tribunal as to his or her identity. The applicant provided a copy of her Malaysian passport to the Tribunal. There is no evidence the applicant has failed to establish her identity and therefore Tribunal is satisfied as to her identity.

47. Therefore, the applicant meets PIC 4020(2A).

Has a visa previously been refused on the basis of a failure to satisfy PIC 4020(2A)?

48. PIC 4020(2B) requires that neither the applicant nor any family unit member have been refused a visa because of a failure to satisfy the identity requirements in PIC 4020(2A) during the period starting 10 years before the application was made and ending when the visa is granted or refused. This requirement does not apply to a person who was under 18 at the time the application for the refused visa was made: PIC 4020(2BA).

49. There is no evidence before the Tribunal to indicate the applicant the applicant or any member of the family unit (as defined in reg 1.12) have been refused a visa in the relevant period because of a failure to satisfy PIC 4020(2A).

50. Therefore PIC 4020(2B) is met.

51. On the basis of the above, the applicant does satisfy PIC 4020 for the purposes of cl 500.217(1).

DECISION

52. The Tribunal sets aside the decision under review and remits the application for a Student (Temporary) (Class TU) visa for reconsideration, in accordance with the order that the applicant meets the following criteria for a Subclass 500 (Student) visa:

- Public Interest Criterion 4020 for the purposes of cl 500.217(1) of Schedule 2 to the Regulations

Date(s) of hearing: 7 November 2024

Representative for the Applicant: Mr Weida Wang (MARN: 2217899)

ATTACHMENT

Migration Regulations 1994

Schedule 4

4020 (1) There is no evidence before the Minister that the applicant has given, or caused to be given, to the Minister, an officer, the ART during the review of a reviewable migration decision, a relevant assessing authority or a Medical Officer of the Commonwealth, a bogus document or information that is false or misleading in a material particular in relation to:

(a) the application for the visa; or

(b) a visa that the applicant held in the period of 12 months before the application was made.

(2) The Minister is satisfied that during the period:

(a) starting 3 years before the application was made; and

(b) ending when the Minister makes a decision to grant or refuse to grant the visa;

the applicant and each member of the family unit of the applicant has not been refused a visa because of a failure to satisfy the criteria in subclause (1).

(2AA) However, subclause (2) does not apply to the applicant if, at the time the application for the refused visa was made, the applicant was under 18.

(2A) The applicant satisfies the Minister as to the applicant's identity.

(2B) The Minister is satisfied that during the period:

(a) starting 10 years before the application was made; and

(b) ending when the Minister makes a decision to grant or refuse to grant the visa;

neither the applicant, nor any member of the family unit of the applicant, has been refused a visa because of a failure to satisfy the criteria in subclause (2A).

(2BA) However, subclause (2B) does not apply to the applicant if, at the time the application for the refused visa was made, the applicant was under 18.

(3) To avoid doubt, subclauses (1) and (2) apply whether or not the Minister became aware of the bogus document or information that is false or misleading in a material particular because of information given by the applicant.

(4) The Minister may waive the requirements of any or all of paragraphs (1)(a) or (b) and subclause (2) if satisfied that:

(a) compelling circumstances that affect the interests of Australia; or

(b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen;

justify the granting of the visa.

(5) In this clause:

information that is ***false or misleading in a material particular*** means information that is:

(a) false or misleading at the time it is given; and

(b) relevant to any of the criteria the Minister may consider when making a decision on an application, whether or not the decision is made because of that information.

…

Migration Act 1958

s 5 Interpretation

(1) In this Act, unless contrary intention appears:

…

bogus document, in relation to a person, means a document that the Minister reasonably suspects is a document that:

(a) purports to have been, but was not, issued in respect of the person; or

(b) is counterfeit or has been altered by a person who does not have authority to do so; or

(c) was obtained because of a false or misleading statement, whether or not made knowingly.

…